

November 25, 2015



**Talbot County Planning Commission**  
**Final Decision Summary**

Wednesday, October 7, 2015 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

**Attendance:**

Commission Members:

Thomas Hughes, Chairman  
John N. Fischer, Jr., Vice Chairman  
William Boicourt (Absent)  
Michael Sullivan  
Paul Spies

Staff:

Mary Kay Verdery, Planning Officer  
Jeremy Rothwell, Planner I  
Mike Mertaugh, Assistant County Engineer  
Elisa Deflaux, Environmental Planner and  
Recording Secretary

**1. Call to Order**—Commissioner Hughes called the meeting to order at 9:00 a.m. Commissioner Hughes explained that Commissioner Boicourt would not be in attendance. He explained that tie votes are considered a negative vote. If any applicant chooses they can withdraw without penalty until the next month. None chose to do so.

**2. Decision Summary Review**—September 2, 2015—The Commission noted the following corrections to the draft decision summary:

a. Line 131, change to read: “Ms. Cox stated they had and it was very difficult.

**Commissioner Spies moved to approve the draft Planning Commission Decision Summary for September 2, 2015, as amended; Commissioner Sullivan seconded the motion. The motion carried unanimously.**

**3. Old Business**

a. Recommendation to County Council—Map Amendment for Clearview Properties

Mrs. Verdery presented the staff report for the applicants request for a zoning map amendment to change the current Town Residential (TR) zoning to General Commercial (GC) on lands owned by Talbot County and R. James Latham. The County owns 6 unimproved lots located at 29290 and 29301 Clearview Avenue, Easton and Mr. Latham owns 1 unimproved lot adjacent to the Talbot County lots and US Route 50, north of Easton. The total acreage is 1.85 acres.

The Comprehensive Plan notes that future residential subdivision development around the airport is prohibited. As noted the current zoning is Town Residential and that is characterized by existing moderate intensity residential uses and they are proposing a change to General Commercial which is characterized by

55 moderate intensity commercial uses. It has a broad range of commercial activities  
56 from retail, wholesale and contracting activities.  
57

58 After a review the Council needs to determine whether there was either a  
59 substantial change or mistake in the existing zoning. In order to approve this  
60 application, applicants have provided information that supports a mistake in the  
61 zoning classification during the last comprehensive rezoning as the Federal  
62 Aviation Administration prohibition for residential development of the property  
63 was not known at the time and therefore it was a missed application of the  
64 underlying facts.  
65

66 The Department of Planning and Zoning recognizes the Comprehensive Plan  
67 policies on prohibiting residential development around the airport and the support  
68 for commercial/industrial infill in existing unincorporated commercial/industrial  
69 areas. The Council supported the request to rezone the adjoining parcel from TR  
70 to GC in 2000 and the previously unknown Federal Aviation Administration's  
71 (FAA) prohibition of residential development on the subject lots support the  
72 request for rezoning from Town Residential to General Commercial on the seven  
73 lots described herein based on a mistake in the original zoning.  
74

75 Commissioner Hughes asked if there was a height limitation on general  
76 commercial because of the FAA restriction. Ms. Verdery stated that there is a  
77 height restriction whether it is permanent or temporary.  
78

79 Commissioner Hughes asked for public comments.  
80

81 Bill Stagg with Lane Engineering appeared before the Commission. He stated he  
82 represents a client who supports this legislation who asked that he write a letter to  
83 the County in support of it. Developers are looking at this property for low  
84 intensity use. It does not currently have sewer so that limits the use of the property  
85 at the moment.  
86

87 Ms. Verdery stated the property is in the gateway so that the height requirements  
88 would need to be 35 feet. Mr. Rothwell stated they would need to meet all of the  
89 other gateway requirements too.  
90

91 Commissioner Hughes stated this road connects all the way through to Black Dog  
92 Alley, what is the chance of this road being used as a shortcut to Black Dog Alley,  
93 especially if some type fast food place were to go up there. Mr. Rothwell said that  
94 when the property is developed roads are reviewed for use with the project.  
95

96 **Commissioner Sullivan moved to recommend to the County Council to**  
97 **approve the Map Amendment for Clearview Properties to change the zoning**  
98 **from Town Residential (TR) to General Commercial (GC) for the lands of**  
99 **Talbot County and R. James Latham, Tax Map 25, Parcels 130, 131, 132,**  
100 **133, 134, 135 and 136, located at 29290 and 29301 Clearview Drive, provided**

compliance with staff recommendations occurs, Commissioner Fischer seconded. The motion carried unanimously.

#### 4. New Business

- a. Administrative Variance—Charles H. Webb, #A220—22601 River Ridge Drive, Bozman, MD 21652, (map 31, grid 14, parcel 370, zoned Rural Conservation), Bill Stagg, Lane Engineering, LLC, Agent.

Mr. Rothwell presented the staff report of the applicant's request for an Administrative Variance to expand a legal nonconforming pool house (classified as an accessory residential structure) located within the 100 foot Shoreline Development Buffer by approximately 88 square feet, or roughly 20% of the existing gross floor area (GFA) within the Shoreline Development Buffer. Additionally, the applicants seek to construct a covered porch on the southeast corner face of the existing pool house. Lot coverage for the entire site would increase slightly by approximately 84 square feet to 21,030 square feet (5.8%), but within the 15% maximum lot coverage threshold, as set forth in the *Talbot County Code* §190-136.

Mr. Rothwell also provided a history of the property. He stated the Critical Area Commission had some concerns and wanted to ensure the applicant was indeed proving a hardship. Mr. Rothwell pointed out there was a significant distance between the pool and the main residence.

Staff recommendations include:

1. The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Planning Office's "Notice to Proceed."
3. Natural vegetation of an area three times the extent of the approved disturbance in the buffer shall be planted in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. A Buffer Management Plan application may be obtained through the Department of Planning and Zoning.

Mr. Sullivan asked if a bathroom currently exists in the pool house. Mr. Stagg stated there currently exists a small bath room that is almost unusable. Commissioner Hughes asked if the Health Department was involved. Mr. Rothwell stated the conditions for an accessory dwelling to be approved in the RC zone would be (1) under 900 square feet including all porches and decks, (2) connected to the same septic system and well; and (3) within 100 feet of the primary dwelling. The applicant meets the first two but does not meet the third.

We would ask that the applicant sign a restrictive covenant saying that it would not be converted to an accessory dwelling.

Bill Stagg, Lane Engineering, along with Tim Kerns, Architect appeared on behalf of Mr. Webb. He stated it is always hard to prove hardship in any variance case. Is there a practical hardship? This is an old structure, the bathroom is roughly eight and a half feet by six feet. It does not function as a bathroom. The applicant proposes taking out the loft space which had been used as sleeping quarters. He wants to modernize it with a better, more functional bathroom. This is taking out a 1960's structure and modernizing it to a modern structure. They still want to have a little bit of space to have some chairs and a seating area to enjoy the pool and get out of the weather in bad times.

Commissioner Hughes asked for public comments; none were made.

**Commissioner Spies moved to recommend to the Planning Officer to approve the administrative variance for Charles H. Webb, 22601 River Ridge Road, Bozman, MD 21652, to expand a legal nonconforming pool house (classified as an accessory residential structure), and to construct a covered porch on the southeast corner of the existing pool house; in addition, applicant shall be required to sign and record a non-conversion agreement; provided compliance with staff recommendations occurs; Commissioner Fischer seconded. The motion carried unanimously.**

- b. Levin Schwaninger, Sr.—Landing Neck Road, Trappe, MD 21675 (map 48, grid 6, parcel 102, Lot 5, zoned Agricultural Conservation), Chris Waters, Waters Professional Land Surveyors, Agent.

Mr. Rothwell presented the staff report for the small scale subdivision. The applicant is proposing to create a single buildable lot from Lot 5 of Tax Parcel 195. With this subdivision, proposed Lot 6 and revised Lot 5 will each be 53.08 acres. Revised Lot 5 will continue to retain the original farmhouse and agricultural outbuildings, while proposed Lot 6 is completely void of any dwellings or structures. Lastly the applicants have proposed to extend Never Dun Lane (a private road) by approximately 490 feet. Mr. Rothwell presented the history of the property.

Staff recommendations include:

1. Address the September 18, 2015 Technical Advisory Comments from the Department of Planning and Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner, and the Critical Area Commission prior to preliminary plat submittal.

Chris Waters, Waters Professional Land Surveying appeared on behalf of applicant. This subdivision is mainly to settle the estate between the two brothers. He stated his clients understand the restrictions on future road usage.

Mr. Waters asked for Preliminary/Final approval on this project. Mr. Rothwell stated staff had no problems with that.

Commissioner Hughes asked for public comments; none were made.

**Commissioner Sullivan moved to approve the Preliminary and Final small scale subdivision of Levin H. Schwaninger, Sr., 6022 Landing Neck Road, Trappe, Maryland; provided compliance with staff recommendations occurs; Commissioner Spies seconded. The motion carried unanimously.**

c. Text Amendment for Sustainable Tourism and Reinvestment (STAR) floating zone

Mr. Pullen presented the Commission with the power point that was previously presented to the County Council. The district is intended to promote reinvestment and redevelopment of the existing tourism related structures or uses that are subject to the restrictions in Chapter 190, Article 8. Those restrictions pertain to nonconforming uses and structures and also contain nonconforming lots. This particular ordinance does not have anything to do with nonconforming lots. This is to remove existing restrictions, to the extent that they exist, in the nonconforming section of the Code in reinvestment and redevelopment of tourism related structures.

Mr. Pullen stated that the district is intended to promote the local tourism industry, to encourage the economical and efficient use of land, and to encourage reinvestment in existing nonconforming tourism-related structures and uses through rehabilitation, redesign, upgrades, demolition, and reconstruction. This is taken from lines 7 through 10 of the Ordinance.

Mr. Pullen reviewed the slides with the Commission which showed the data developed regarding the local tourism economy, tourism employment, and tourism state and local taxes.

Mr. Pullen stated the requirements are a floating zone that may be applied to parcels with existing legal nonconforming hotels, motels, community and cultural facilities, golf courses open to the public, inns, marinas, or restaurants that have been in commercial use for at least 10 years and have a legal non-conforming status. Commissioner Fischer asked if that is the current use or a future 10 year period. Mr. Pullen stated that is to prevent the STAR district from being expanded beyond the existing boundaries of a parcel that was already in use. At the same time address the potential problem of expanding the footprint of the parcel by incorporating an adjacent parcel that wasn't in commercial but by including it in a

STAR district that allows these uses that allows it to expand beyond these uses. This is an open question and needs to be thought through as we go forward. He stated the answer he gave to Robert Holman was that a building did not have to be in continuous commercial use for 10 years preceding the application, it could be any 10 year period. Commissioner Hughes stated the issue he has on that point is if a nonconforming use lapses for more than a year under our present Code that use goes away, so this trumps that? Ms. Verdery stated it has to be existing today and has to have been in that use for 10 years. Commissioner Spies stated that the property has to be in continuous use for 10 years is not the way to go. At some period in 10 years it might not have been in use and the reason you have to have it updated is because it is not economically viable. As the County ages and as some of our commercial structures age you need to be able to have a conversation about them. As it stands now we cannot even have a conversation about them. But to say 10 years of continuous use almost rules out some properties that need some help. Commissioner Hughes stated he was worried about conflicts with the Code.

Mr. Pullen discussed the permitted uses and structures. He explained that adoption of the STAR district puts the uses on par with what would be new and built today.

Mr. Pullen stated the existing limitation on nonconforming structures is that they may be demolished and replaced on their existing locations. Or repair damage after natural causes or fire with replacement in-kind. In-kind replacement means the replacement of a structure with another structure that is substantially identical to the original in all dimensions including footprint, area, height, length, width and use.

Commissioner Hughes asked if there was an existing restaurant and they put a STAR zone on it, could they then add another use. Mr. Pullen stated this is all discretionary. Any time there is a zoning map amendment the applications compliance with all of the requirements for permits, but does not require that the application be granted. An application could change the use from a hotel to a restaurant or could add perhaps some rooms in an existing restaurant, but it would all be subject to the discretion of the Planning Commission and the Council.

Mr. Pullen stated the bulk requirements in the STAR zone would be the same as in the base zone or applicable overlay zone, whichever is more restrictive. Pre-existing legal nonconforming improvements that do not comply with existing bulk requirements could be continued, and the extent of any nonconforming bulk requirements could be permitted for any new or replacement improvements, but could not be increased without a variance.

Commissioner Hughes said Section 190-167 part (d) said if you want to increase any of the bulk values you need a variance. How can you say part 190-167 does not apply? Mr. Pullen stated that the requirement in that section would still apply.

283 In 167 part (d) it refers to the restriction that says a structure used for a  
284 nonconforming use cannot be moved or demolished and rebuilt unless the use is  
285 changed to a permitted use unless it is built in-kind. So that basically locks down  
286 existing nonconforming tourist related facilities to in-kind replacement of existing  
287 structures. Commissioner Hughes stated there is a parking component in that  
288 section as well. Mr. Rothwell stated that stipulates that whatever the footprint of  
289 the parking and loading area cannot be expanded by more than 10%.  
290 Commissioner Hughes asked if that would go away. Mr. Rothwell stated that  
291 would be subject to whatever is approved.

292  
293 Expansion of structures used for nonconforming uses is limited under 167(d) to  
294 no more than 20% of gross floor area or 1,000 square feet, whichever is less. That  
295 limitation would be eliminated in the STAR district. You would be putting this  
296 tourist related facility on a level field with a tourist related facility that would be  
297 built new.

298  
299 Mr. Pullen stated that calculation of the maximum structure height shall exclude  
300 rooftop mechanical equipment, elevator overruns, and any approved architectural  
301 detail or parapet minimally sized to hide those elements. He stated there had been  
302 a number of inquiries about this and it may need some clarification about what  
303 exactly is intended and what is permitted and what this language means, and if it  
304 needs to be amended in a more significant way. He stated Ms. Verdery stated  
305 there is an existing definition for mechanical structures/mechanical systems in our  
306 building code that we might substitute for mechanical equipment. When the  
307 question came up at the County Council meeting Mr. Pullen stated he replied it  
308 was for the air conditioning units, air handlers and the architectural detail would  
309 be minimally sized to hide those elements. This could be worked on.

310 Commissioner Sullivan stated that instead of saying minimally sized say sized to  
311 hide those elements. If they need that then you will have your minimum.

312 Commissioner Hughes stated the forty foot height limit has been around as long  
313 as he can remember and he spoke with Commissioner Boicourt who stated the  
314 same. The forty foot height limitation has been as sacrosanct as the one hundred  
315 fifty foot pier. The practical effect of allowing mechanicals on the roof and  
316 architectural would be to allow a four story building instead of a three story  
317 building. From the letters we have received it is concerning some others as well.  
318 Commissioner Fischer stated that exceeding the forty foot limit is of concern to  
319 many people, as well as what percentage of the roof would be used for these  
320 parapets or cupolas. Also what would the height limit be for these things?

321  
322 The new definition of Redevelopment Plan is a component part of an application  
323 for a Sustainable Tourism and Reinvestment district that details the size, location,  
324 setback, height, architectural features, and other characteristics, features, and uses  
325 of structures in the district. The redevelopment plan shall include the location of  
326 roads, access, easements, parking, landscape features, open space, reserved areas,  
327 drawings, elevations, plans, construction phasing and schedules, and all other  
328 features or information deemed necessary to complete or supplement an

329 application. This was intended to be very broad based and in the process of these  
330 applications the Planning Director can ask for and is entitled to get additional  
331 information.  
332

333 Commissioner Hughes expressed concerns about the plan that is originally shown  
334 to the public and what the result that is ultimately built may be two entirely  
335 different things. Is there some condition that the redevelopment plan and the site  
336 plan be exactly alike. In other words if the Council and the Planning Commission  
337 go through the laborious process of approving the STAR zone, and the site plan  
338 looks materially different from what the redevelopment plan is, is there any  
339 presumption of approval that has to be dealt with? Mr. Pullen stated that the  
340 legislation addressed this, it states: "The site plan approval shall be based upon,  
341 consistent with, and shall implement the approved Redevelopment Plan."  
342

343 Ms. Verdery stated the level of detail of Redevelopment Plan and Site Plan, are  
344 not compared to one another. In a Redevelopment Plan we are looking for them to  
345 show us where the building is going to be and what the use of the structure is  
346 going to be. As we go through the Site Plan process we may find there is wetlands  
347 on the site or some other set back and they may need to tweak the building a little  
348 bit requiring a double process, going through the Site Plan process after they go  
349 through the Redevelopment Process. Commissioner Hughes stated an additional  
350 clause should be added such as, "and be consistent with the warrants and major  
351 site plan approval in Section 19-184." Because this would imply the site plan is  
352 solely based on the Redevelopment Plan. Ms. Verdery stated line 88 and 89 state:  
353 "After approval of a "STAR district the applicant shall apply for site plan  
354 approval in accordance with §190-184 to implement the Redevelopment Plan."  
355

356 Commissioner Hughes requested that major be inserted in front of site plan. Ms.  
357 Verdery stated that some of the projects would not be major site plans.  
358 Commissioner Hughes asked what was the threshold for a STAR between a major  
359 and a minor? Ms. Verdery stated it is the same threshold as any site plan – 1,000  
360 square feet addition. She also stated that as with any site plan the Planning Officer  
361 has the opportunity to bring a minor to the Planning Commission, if there is any  
362 contentious district or other special or unique circumstance. Mr. Rothwell stated  
363 one of the reasons that the Redevelopment Plan has to go through TAC as part of  
364 the process is to ensure their proposed Redevelopment Plan is in compliance with  
365 all local, state and federal codes, so we are not getting to the site plan process and  
366 figure out we are not complying with some particular regulation. Commissioner  
367 Hughes hoped that approval of the STAR district would not convey any inference  
368 of rights per the development plan until it had gone through the site plan process.  
369

370 Mr. Pullen turned the Star Application, Decision-Making, and Implementation  
371 Process over to Ms. Verdery. The process starts with the Pre-Application Meeting  
372 with the Planning Office. The next step is a request to County Council for  
373 sponsorship of STAR Application. They must have sponsorship of at least one  
374 County Council member. If they receive no sponsorship it stops. If they receive



375 sponsorship they submit the STAR Application to the Planning Office. Once the  
376 application is received the Planning Officer determines whether or not it is  
377 complete, if not it is returned to the applicant. If the application is complete it  
378 goes to the Technical Advisory Committee for review and they can advise the  
379 Critical Area Commission if necessary. Then there is a required community  
380 meeting. The Planning Director schedules Planning Commission review and  
381 provides public notice.  
382

383 The Planning Commission will hold public hearing and make recommendation to  
384 the County Council and/or the Planning Commission may request a work session  
385 together with the County Council. The Councilmember will decide on  
386 introduction of the legislation. If no Councilmember wants to introduce the  
387 legislation the application is denied. If at least one Councilmember is willing to  
388 introduce the legislation then it is introduced and it moves forward for scheduling  
389 through the County Council process. A public hearing on the proposed application  
390 is scheduled and then the County Council will vote on the legislation. If during  
391 the vote there is no support for the application, it is denied. If there is a positive  
392 majority support for the application then the legislation will become effective 60  
393 days after its approval or the date the Critical Area approves the project if that is  
394 necessary for their approval. That is the approval on the STAR application for the  
395 overlay district and the Redevelopment Plan.  
396

397 Once that process is completed there is a Pre-Application again for the Site Plan.  
398 This is in accordance with the process that is already in place for any commercial  
399 development. The site plan is submitted to the Planning Officer in compliance  
400 with the approved STAR and Redevelopment Plan. It goes to TAC for review and  
401 the Critical Area may be part of that. Then, at the option of either the Planning  
402 Director or the Planning Commission, there can be another Community Meeting.  
403 It then goes to Planning Commission. The Planning Commission reviews the site  
404 plan and it will go forward to the Compliance Review Meeting which is the final  
405 approval, and then on to the building permit process. This is the plan that is laid  
406 out for a major site plan.  
407

408 Commissioner Fischer asked about inns being included—Wades Point Inn, Black  
409 Walnut Inn and Lazy Jack Inn—and how to handle those. Mr. Rothwell stated  
410 those are a separate use. Mr. Pullen stated those are accessory residential uses  
411 where the owner of the inn is required to live in the inn. Commissioner Hughes  
412 stated that the definition of an inn in the Code is: “Any structure(s) containing not  
413 more than 10 guest rooms occupied on a transient basis where, for compensation,  
414 lodging, bath, and meals are provided for not more than 30 guests, excluding a  
415 school or college dormitory.” Commissioner Fischer stated there should be  
416 language to clarify that. Mr. Rothwell said that just because a business happens to  
417 say it’s an “Inn” does not mean it is classified as an inn under our zoning Code.  
418 Commissioner Hughes stated that is what we have to be wary of.  
419

Commissioner Fischer stated that the “STAR” buildings would need to be compatible with the community and its surroundings and that is particularly true of building mass. Commissioner Hughes asked if it is possible to get a variance for height. Ms. Verdery stated you can apply for it but you have to prove the warrants, there have been three requests since she has been here and not have been granted because they cannot prove the warrants. Mr. Rothwell stated most zoning ordinances were standard in height at forty feet. He has seen other jurisdictions that define mass differently, some have allowed for a steeple or a cupola. Commissioner Hughes stated our Code makes exceptions for that, but the standard with regard to height is from the lowest improved elevation to the roofline. The Code also has a twenty-five foot limit on residential accessory buildings on lots 2 acres or less and thirty feet on lots larger than 2 acres. Chimneys, church belfries or spires, conveyors and private radio or television antennas are seventy-five feet and antennas for essential communications are two hundred feet.

Commissioner Hughes asked for public comments.

Jon H. Letowt, 24829 Swan Road, Martingham, currently President of Martingham Property Association (MPA) and have been for 8 years. Here in support of the proposed STAR legislation. Prepared a document for the Planning Commission. At a meeting of the Board of Directors of the Association on Monday, September 28, 2015, it was Resolved that the Board lend its full support to the proposed legislation known as the STAR legislation currently being discussed by the Planning Commission. The MPA Board supports the draft version as it appears on or about September 15, 2015 on its website. Commissioner Hughes asked if any of the people in Martingham expressed concern about a building over forty feet blocking any views or anything like that? Mr. Letowt said yes, that has been considered and was discussed. At this juncture they are supporting STAR legislation knowing that any application has to submit a plan and it has to go through the “wild and wooly” flow chart shown earlier. They expect that as this process moves forward any exceptions and variances will be handled individually as they come up and that will be up to the Planning Commissions, the County Council and the Planning Officer as they come up. There was one specific point that came up. There is one point of land that is occupied by one story cottages, that in that particular area at Harbourtowne, that nothing be built in that area that is higher than the existing structures. That was one particular stipulation that we thought we would make to the Harbourtowne representatives that we have made in writing.

Bruce Armistead and Zack Smith, representing Capital Properties, the parent company of Harbourtowne. Mr. Armistead commended the staff and everyone involved in the process for their hard work to get to where they are today. He believes the intent was pure and the County Council was striving to respond to an important opportunity at Harbourtowne but there was some concern about what you referred to as the unintended consequences. We have an owner who has a

vision and the capacity to do something in Harbournowne which is significant, but as Mike has adequately explained today the limitations are so strict on the nonconforming uses that not much can happen. Mr. Armistead stated he listened to the owner in terms of code compliance, handicapped access and I knew that what he would wind up with in an in-kind replacement would not be satisfactory to him and would probably be an under-improvement. I also knew Mary Kay and the entire staff would be uncomfortable about stretching the in-kind improvement. I don't think the zoning ordinance is intended to stifle those types of improvements and the aging infrastructure that we have. So where we are today is with the STAR Legislation that we think is an excellent effort and the flow chart that Mr. Letowt termed "wild and wooly". The key point is that there is a multi-level improvement process. The recommendation of this legislation and passage by the Council is simply providing the opportunity to come forward with something, not the obligation to approve anything. Mr. Smith stated that this roadblock is very much the nonconforming section of the Code. It is not just being able to ask the question of the Planning Commission or the County Council, nobody in the County government can approve expansions to or changes in those nonconforming uses. This STAR legislation very much will allow us to come forward and enter into that process and will give the community an opportunity to understand what is being proposed, an opportunity to provide input in the review of that and give the County the complete discretion to say yes or say no. This is an opportunity for the County to better implement the Comprehensive Plan. Mr. Smith stated that regarding the height limitation you don't necessarily need to anticipate every appropriate and inappropriate circumstance. Through a discretionary process you don't have to be proactive, you can react to proposals that come before you and you can look at each proposal. You can look at the context in which it is being proposed and determine whether or not that particular proposal is appropriate under the circumstances. And only if it is, then you would be advised to grant the proposal if you find it appropriate.

Ellen Balinski, President of the Hamilton Cove Property Owners Association, we are a member of the Martingham Property Association, and also have our own association. We have voted to abstain from the STAR legislation. We believe that Harbournowne needs some work but are by far the most affected residents of Martingham with any work that will be done on the golf course, the club, the marina, the road way. Listening to you today I am more comfortable and feel you will hold their feet to the fire. We are not against redevelopment, but are concerned about some of the things we are hearing, particularly with bulk height.

Dan Watson, Aveley Farm, stated he wanted to offer an idea on the legislation on one question that might still be open regarding the 10 year time frame and what that might mean. He would suggest the notion that the continuous for a period of 10 years seems reasonable but it must have extended within the last 5 years or 3 years, some finite period, prior to the date of application. That has two purposes: one it keeps some bizarre circumstance arising of someone dusting off records of some property in the fifties having continuous use of a property. It also is a

512 positive incentive of properties that become obsolete and close up. The normal  
513 business phenomenon is that a property is uneconomic, the property independent  
514 of the nature of the business, closes down. He echoed Mr. Armistead's point  
515 about what a positive turn this legislation is from the beginning point and speaks  
516 strongly in favor of the STAR legislation. He also agrees with Mr. Smith's  
517 comments about the benefits of discretionary application of these rules because in  
518 the real world it is much easier and more thoughtful to be reactive to particular  
519 proposals that are being made given the presumption that indeed the Planning  
520 Commission is a strong body that would exercise its authorities after an important  
521 public interaction that preceded any site plan approval.  
522

523 Commissioner Hughes asked if the Commission had reached a consensus on the  
524 ten year rule. Commissioner Fischer stated that Mr. Pullen was going to revisit  
525 that issue. Commissioner Hughes was concerned about a building which was  
526 nonconforming and had not been in use for a number of years and someone would  
527 try to resurrect that use. Mr. Pullen said this would apply to actual structures and  
528 the question would be whether what was now a derelict building and could it now  
529 be removed and replaced with something different, recognizing that everything it  
530 had been approved for was completely discretionary. Commissioner Hughes said  
531 the point is that per the Code, once the building has been out of use for a year  
532 could someone apply for the STAR once the use has expired. Ms. Verdery stated  
533 that the action of just not using that structure does not abandon that use. We have  
534 had properties that have not been used for a period of a year because of  
535 renovations or economically they could not support continuing. What supports  
536 abandonment of the use is we have had a general store in the village that was  
537 converted to a residence and they want to convert it back. In that case they have  
538 abandoned the use because they changed the use completely. If it just sat there  
539 vacant waiting for the new tenant to come in and occupy and use it as a general  
540 store, if the intent was not to abandon the use, we consider that as a use.  
541 Commissioner Spies stated the best reason to put a limitation on how long a  
542 property has been vacant is to encourage the development of the property rather  
543 than letting it sit. He would like to encourage people to come fix these buildings  
544 rather than just let them sit. Commissioner Hughes clarified that this legislation  
545 applies to nonconforming uses only.  
546

547 Commissioner Hughes asked if there were a list of particulars they wanted to go  
548 through. Ms. Verdery stated there was the 10 year time limitation and the  
549 maximum height limitation. Mr. Pullen suggested that the comments from Mr.  
550 Watson and Commissioner Spies are pretty simple to incorporate in the text so  
551 that it could be ten years of continuous use. The application would need to be  
552 following five years, within five years of the last commercial use.  
553

554 **Commissioner Spies moved to make a positive recommendation to the**  
555 **County Council to formally move forward with the text amendment for**  
556 **Sustainable Tourism and Reinvestment District legislation, with the**  
557 **comments submitted, regarding the ten year requirement and possible**

558 **concerns about heights; Commissioner Fischer seconded. The motion carried**  
559 **unanimously.**  
560

561 d. Resolution to Amend the Talbot County Solid Waste Management Plan to  
562 Establish a Special Events Recycling Program  
563

564 Mr. Kupersmith presented the background on the Resolution. In 2014, the  
565 Maryland General Assembly passed Senate Bill 781 requiring local governments  
566 adopt the special events recycling program. The purpose to come before the  
567 Commission is to have the Commission consider if this is consistent with the  
568 Comprehensive Plan. This special events recycling program only applies to  
569 certain types of special events and criteria are that the event include temporary or  
570 periodic use of a public street, publicly owned site or facility, or public park  
571 where food or drink is served where attendees are numbered two hundred or  
572 more. So not every event that people are having, not every wedding, not every big  
573 event is going to be subject to this requirement. One event that may come to mind  
574 will be the Waterfowl event, another example might be the County Employee  
575 Cookout usually held at the Golf Course. So if you do qualify the burden is placed  
576 on the special event organizer, and they become responsible for meeting the  
577 requirements of the Resolution. You have to have a recycling receptacle next to  
578 every trash receptacle. This covers plastic bottles, glass, metal and paper. There is  
579 also mention of food scraps the event organizer has to look into. Event organizers  
580 then have to figure out how to get the receptacles out and deliver to the transfer  
581 stations. The legislation includes provisions for enforcement, up to a \$50.00  
582 penalty per day. The Towns are also authorized to enforce this in their  
583 jurisdictions.  
584

585 This material has been provided from the state and the state says the local  
586 governments must update their Comprehensive Plan Solid Waste Management  
587 Plans by October, 2015.  
588

589 Commissioner Hughes asked if the event organizers are required to post any  
590 insurance bonds. Mr. Kupersmith said not according to the Bill. Commissioner  
591 Hughes asked if the County is then liable. Mr. Kupersmith said if the property  
592 owner gives permission. Commissioner Hughes said he is worried about if it is on  
593 County property. Mr. Kupersmith said typically you would include an indemnity  
594 provision which would indemnify you from any actions arising out of the event.  
595

596 Commissioner Hughes asked what about hazardous materials for recycling. Mr.  
597 Kupersmith said the burden would be on the organizer to see to it that whatever  
598 the materials are they collect are disposed of, that burden will be on them.  
599

600 There was discussion and concern among the Commissioners about the burden  
601 and cost of the program, whether it would get done properly and who would pay  
602 for it.  
603

Commissioner Spies asked if anyone from the Town of Easton had seen this? Mr. Kupersmith stated that all of the towns had received this and their attorneys as well. There had not been any comments from them. Commissioner Spies stated he could think of a couple of events that were County related, but most of the big events were Town related. If they did not have a problem he did not see any. His main concern is that it would have been nice to hear from someone from the town on how it relates to their position and their job. Mr. Kupersmith stated that if the towns are fully opposed to the idea they would have to go to general assembly to have the provision in the environment article changed. Those requirements exist in state law, this is a refining of that.

Commissioner Hughes asked about paragraph E. at the end of the Bill regarding Program Enforcement, is the \$50.00 all that is required under state law, could that be increased and/or could there be language put in that if you screw up you could not get another permit, or is that going too far afield. Mr. Kupersmith stated he believes it authorizes a \$50.00 per day fine. Whether you could go beyond that he is not sure.

Ms. Verdery stated under D. it outlines the obligation of the event organizer. Commissioner Hughes asked if that would give the County the ability to go back and bill the organizer if they left a mess. Mr. Pullen stated that would be under the terms of the lease agreement which would require certain things.

**Commissioner Spies moved to recommend to the County Council that Resolution No. 222, A Resolution to amend the Talbot County Solid Waste Management Plan to establish a special events recycling program as required by state law pursuant to Sections 9-1703(B)(14) and 9-1712 of the Environment Article, Annotated Code of Maryland; and that the Commission finds that it is consistent with the Comprehensive Plan; Commissioner Fischer seconded. The motion carried unanimously.**

## **5. Discussions Items**

Ms. Verdery stated there was a County Council work session on the Comprehensive Plan and discussed the comments and recommendations of the Planning Commission after the special meeting of September 30<sup>th</sup>. I felt we moved well through those topics and then we got onto the topic of Affordable Workforce Housing and things slowed down. There are a few remaining Affordable Workforce topics and a few other outstanding topics from individuals requests. My request to the Planning Commission is we are getting to the closing point to make the final changes so that we can develop a plan that is the County Council's Comprehensive draft so that we can get that out. So instead of coming back to the Planning Commission for another recommendation and then back to the Council we could make those changes in the Plan and provide a complete document.

Commissioner Fischer stated he is discomforted by the content of Council discussions on Affordable Workforce Housing. At some point someone needs to stand up and define Affordable Workforce Housing. Two distinct categories of housing have been lumped together and that is not appropriate, they are different. To pass one off as the other is inappropriate and confusing.

Ms. Verdery stated there have been a lot of requests from the public to see a draft. Commissioner Hughes stated that he thinks the public knows at this point that at lot of the changes the County Council has made are not what the Planning Commission recommended.

Commissioner Hughes wanted to commend all of the staff and the Commission members for all of the work on their last work session, for once the Council has agreed to all of their recommendations.

**6. Staff Matters**

**7. WorkSessions**

**8. Commission Matters**

**9. Adjournment**—Commissioner Hughes adjourned the meeting at 11:47 a.m.

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